

the Committee in a business meeting of the Committee: Provided, that no vote may be taken on any proposed amendment unless such amendment is reproduced in full in the Committee agenda for such meeting at least seven (7) days in advance of such meeting.

IMPEACHMENT

Mr. CRUZ. Mr. President, I ask unanimous consent that the following op-ed be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Fox News, Feb. 9, 2021]

SEN. TED CRUZ: SHOULD THE SENATE EXERCISE IMPEACHMENT TRIAL? WHY THE ANSWER MATTERS

(By Ted Cruz)

The constitutional question of whether a former president can be impeached or tried after he has left office is a close legal question. On balance, I believe that the better constitutional argument is that a former president can be impeached and tried—that is, that the Senate has jurisdiction to hold a trial.

However, nothing in the text of the Constitution requires the Senate to choose to exercise jurisdiction. In these particular circumstances, I believe the Senate should decline to exercise jurisdiction—and so I voted to dismiss this impeachment on jurisdictional grounds.

Article I, Section 2 of the Constitution gives the House “the sole Power of impeachment,” and Section 3 gives the Senate “the sole Power to try all impeachments.” At the time the Constitution was adopted, there was meaningful debate over whether impeachment encompassed so-called “late impeachments,” i.e. after the person had left office.

The British common law, which informed the understanding of the Founders, suggests that the better answer is yes.

In the 18th century, there were two English impeachments of note: Lord Chancellor Macclesfield in 1725 and India’s Governor-General Warren Hastings, which extended from 1787 to 1795. Both were late impeachments (after they had left office). Shortly after the Founding, a third British impeachment occurred: Lord Melville in 1806. His impeachment also occurred after he left office.

The American experience is similar. In 1797, the House impeached Sen. William Blount, and in 1876 the House impeached Secretary of War William Belknap. Both had left office by the time articles of impeachment were delivered to the Senate.

With Blount, the Senate voted that it lacked jurisdiction (although principally because he had been a senator and not a member of the executive), and with Belknap, the Senate voted that it had jurisdiction but declined to convict.

To be sure, there is textual ambiguity on the question of whether impeachments of a former president are constitutional.

One can look to other provisions of the Constitution—such as article II, Section 4’s reference to “the President” (not “a President”), and that same section’s language that says an impeached individual who is convicted “shall be removed from office”—and conclude in good faith that late impeachments are not permissible.

However, given the historical underpinnings and the Constitution’s broad textual commitment (“sole power”) of the impeachment power to the House and Senate, I believe the best reading of the Constitution is that the Senate retains jurisdiction.

Imagine, for example, that evidence were uncovered that a former president had sold nuclear secrets to the Chinese government. In that instance, where the president had hypothetically committed both treason and bribery (explicit grounds for impeachment in the Constitution), there is little question that both the House and Senate would have exercise jurisdiction to impeach and try those crimes.

Importantly, there are two types of jurisdiction: mandatory and discretionary. With mandatory jurisdiction, the tribunal must hear the case; with discretionary jurisdiction, the tribunal can decide whether to exercise its legal authority to hear the case. For example, the vast majority of the Supreme Court’s caseload arises on discretionary jurisdiction—it has the authority to hear most cases, but it doesn’t have to do so.

And nothing in the Constitution makes the Senate’s impeachment jurisdiction mandatory. “Sole power” means “sole power”—the Senate can decide whether to hear the case.

The present impeachment is an exercise of partisan retribution, not a legitimate exercise of constitutional authority.

The House impeached President Trump in a mere seven days. It conducted no hearings. It examined no evidence. It heard not a single witness.

For four years, congressional Democrats have directed hatred and contempt at Donald J. Trump, and even greater fury at the voters who elected him.

On the merits, President Trump’s conduct does not come close to meeting the legal standard for incitement—the only charge brought against him.

His rhetoric was at times over-heated, and I wish it were not, but he did not urge anyone to commit acts of violence. And if generic exhortations to “fight” or “win” or “take back our country” are now indictable, well, be prepared to arrest every candidate who’s ever run for office or given a stump speech.

House Democrats argue that these circumstances are different. The situation was politically charged. The protesters were angry. And what started as a peaceful protest on the Ellipse ended up with some of the protestors engaging in a violent terrorist assault on the Capitol that tragically took the life of a police officer.

If that’s the new standard—and if strong rhetoric constitutes “High Crimes and Misdemeanors”—then Congress better prepare to remove House Speaker Nancy Pelosi, D-Calif., Rep. Maxine Waters, D-Calif., Sen. Chuck Schumer, D-N.Y. and former Sen. Kamala Harris, D-Calif., next.

Repeatedly over the past four years, multiple Democrats have engaged in incendiary rhetoric and encouraged civil unrest, including Speaker Nancy Pelosi who expressly compared law enforcement to Nazis, Rep. Waters, who emphatically encouraged a campaign of intimidation and harassment of political opponents, Sen. Schumer, who made threats—by name—to “release the whirlwind” against two sitting justices of the Supreme Court, and then-Sen. Harris, who actively campaigned to provide financial support, in the form of bail, for rioters last summer even after hundreds of law enforcement officers were injured and many people, including retired St. Louis police captain David Dorn, were brutally murdered.

There is no coherent rationale that renders President Trump’s remarks “incitement,” and somehow exonerates the angry rhetoric of countless Democrats. If Trump’s speech at the Ellipse was incitement, so too was Schumer’s threat on the steps of the Supreme Court.

The honest answer is both may have been irresponsible, but neither meets the legal standard for incitement.

Accordingly, I voted against the Senate taking jurisdiction in this trial. In different circumstances, the Senate could choose to exercise its constitutional authority to try a former office-holder. But here, when the House has impeached without evidence or Due Process, and when it is petty and vindictive and it fails to meet the legal standard, then the Senate should have declined to exercise jurisdiction.

President Trump is no longer in office, and nothing is served—other than partisan vengeance—by conducting yet another impeachment trial.

ADDITIONAL STATEMENTS

TRIBUTE TO LESLEY ROBINSON

• Mr. DAINES. Mr. President, this week I have the honor of recognizing Lesley Robinson of Phillips County. Lesley recently made history when she became the first woman elected as the Montana Stockgrowers Association’s second vice president.

Lesley is not afraid to be the first in any venture. Her past experience as a leader in Montana began in 1996 when she became the second woman ever elected to serve on the board of directors for the Montana Stockgrowers. Lesley also ran for office and was elected as a Phillips County commissioner in 2005. During her 12-year tenure as a commissioner, Lesley was a strong advocate for Phillips County and rural Montana. She also had a leadership role on the Executive Committee for the National Association of Counties. Most recently, Lesley served as former Congressman Greg Gianforte’s State director.

As a fourth-generation rancher, Lesley knows the importance of hard work. She and her husband, Jim, own a commercial cow/calf and yearling operation near Zortman, MT. Her past leadership roles and ranching experiences have led her to be a fierce voice for agriculture and the importance it has as Montana’s No. 1 economic driver.

It is my honor to recognize Lesley for her leadership and service to Montana. I look forward to hearing about her continued success.●

TRIBUTE TO GARY HERBERT

• Mr. ROMNEY. Mr. President, I rise to congratulate my friend Gary Herbert on a career of esteemed public service. Gary’s steady hand of leadership as the 17th Governor of Utah guided our State closer to fulfilling its promise of safety, security, and prosperity for all Utahns.

A son of Orem, UT, Gary faithfully answered his call to service in his early life and career. From his missionary service for The Church of Jesus Christ of Latter-day Saints, to his military and civil service as a staff sergeant in the Utah Army National Guard, to elected office, Gary’s unwavering early commitment to public service earned him the respect and experience necessary for future success.